

**United States Court of Appeals - Tenth Circuit**

**CRIMINAL JUSTICE ACT**

**CLAIMS FOR HOURLY COMPENSATION AND EXPENSE REIMBURSEMENT**

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**ADVICE TO COUNSEL  
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# **United States Court of Appeals - Tenth Circuit**

## **CRIMINAL JUSTICE ACT**

### **CLAIMS FOR HOURLY COMPENSATION AND EXPENSE REIMBURSEMENT**

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#### **ADVICE TO COUNSEL**

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#### **I. General Statutory Provisions**

Counsel appointed to provide appellate representation under the Criminal Justice Act may be compensated for time “reasonably expended” and expenses “reasonably incurred.” 18 U.S.C. § 3006A(d)(1). *See* rate sheet page 11 for presumptive compensation maximums. However, these presumptive maximums may be exceeded if the representation provided was “extended or complex” and there is a judicial certification that such excess payment is necessary to afford fair compensation. Excess payment must also be approved by the chief circuit judge or her delegate. *See* § 3006A(d)(3).

#### **II. Excess Compensation Claims**

If hourly compensation is sought in excess of the statutory maximum, counsel must submit a concise memorandum showing that the representation was extended or complex and that excess payment is necessary for fair compensation. If the legal or factual issues in a case are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case, the case is “complex.” If more time is reasonably required for total processing than the average case, the case is “extended.”

The following criteria, among others and as applicable, should be discussed to aid the court in determining if excess payment is necessary to provide fair compensation: the complexity/novelty of the issues and whether any of these issues were briefed at the district court; matters researched but not briefed; responsibilities involved measured by the magnitude and precedential importance of the case; manner in which duties were performed; special skills, knowledge, efficiency, professionalism, judgment and experience required of or used by counsel; the nature of counsel’s practice and any injury thereto resulting from the representation; any unusual pressure of time or other factors under which professional services were delivered; and any other circumstance relevant and material to a determination of a fair and reasonable fee.

#### **III. Case Budgeting**

Case budgeting is appropriate in complex or extended representations that appear likely to become or have become extraordinary in terms of potential cost (ordinarily, a

representation in which attorney hours are expected to exceed 300 hours or total expenditures are expected to exceed \$30,000 for appointed counsel and services other than counsel on behalf of an individual CJA defendant). If the court determines that case budgeting is appropriate (either on its own or upon request of counsel), counsel should submit a proposed initial litigation budget for court approval, subject to modification in light of facts and developments that emerge as the case proceeds. **Please use the appropriate proposed budget form found in the CJA Forms and Links portion of the court's website (<http://www.ca10.uscourts.gov>)**

#### **IV. When to File**

Generally, one voucher must be submitted on a CJA 20 voucher within 45 days of final disposition of the case, unless good cause is shown for delay. "Final disposition" is considered the later of: (a) after a petition for certiorari is filed; (b) after the decision becomes final or the appeal is otherwise terminated, if no petition for certiorari will be filed; or (c) upon entry of an order granting counsel permission to withdraw if no subsequent CJA counsel will be appointed (i.e., defendant will proceed with retained counsel, with the Federal Public Defender as counsel, or *pro se*). If counsel is applying for certiorari, then the voucher must be submitted after the filing of the petition.

#### **V. What to File with CJA 20 Voucher**

##### **A. Documents**

If the following pleadings filed in the appeal by CJA appointed counsel are **not** available on PACER, a paper copy of each (without attachments) **must** be submitted with any CJA 20 voucher request: any brief, dispositive motion or response, motion for release, petition for rehearing and/or certiorari.

##### **B. Compensation Worksheets**

Attorney time must be documented on the attached "In-Court" and "Out-of-Court" worksheets, or on a substantially similar form. Time must be broken down according to date (in chronological order), description of services, amount of time in hours and tenths of an hour, and according to the categories established for payment on the CJA 20 voucher, Lines 15g and 16a-e. If billing records are not reported in tenths of an hour, the court will round down the total hours claimed.

Use of the enclosed worksheets facilitates the court's review of counsel's request for compensation, but billing records may be submitted in place of the worksheet so long as they are in chronological order, all hours claimed are assigned to one of the six CJA 20 voucher categories, and the totals for each category are listed on the face of the voucher.

Failure to provide sufficient detail to permit meaningful review of a claim may result in delay or denial of approval of the claim.

Note: records must be retained by counsel for three years after approval of the voucher.

### **C. Expense Worksheets**

Expenses must be documented on the attached expense worksheets, or on a substantially similar form. With certain exceptions (e.g. room service meals, CALR, commercial copying) counsel must provide documentation to support claims for reimbursement such as itemized bills, receipts, or invoices, only for single item expenses that exceed \$50.00. Credit card slips and credit card statements may not be sufficient because they lack detail that would permit approval of the expense as reasonable and reimbursable. *See* Sections VII and VIII below for further instructions and information. Expenses not properly documented may be disallowed in their entirety.

## **VI. Claims for Hourly Compensation - General Rules**

### **A. Hourly Rates**

Counsel is advised to refer to the *Criminal Justice Act Payment Rates* (which may differ from the rates stated on the voucher) on page 11 to ensure proper hourly rates are entered on the voucher for the dates worked. Before submitting a voucher to the clerk, counsel may wish to visit the CJA Forms & Link portion of the court's website (<http://www.ca10.uscourts.gov>) to ensure compensation at the correct hourly rates. Submission of a voucher with incorrect rates may result in payment at a lower hourly rate than that to which counsel may be entitled.

### **B. In-Court Time**

In-court time is limited to one hour or the actual time of argument. Waiting time may be claimed as out-of-court time.

### **C. Partners and Associates (Within Firm)**

Compensation may be claimed for services provided by a partner or associate in appointed counsel's law firm, but extra tasks or other work inefficiencies resulting from such division of labor (e.g., attorney conferencing) is not compensable. The amount must be within the maximum compensation allowed by the Act. The compensation worksheets must separately identify the provider of each service.

### **D. Compensation of Counsel (Outside Firm)**

With prior authorization by the court, appointed counsel may claim compensation for services furnished by counsel who works outside of appointed counsel's law firm. Extra tasks or other work inefficiencies resulting from such division of labor (e.g., attorney conferencing) is not compensable. The amount

must be within the maximum compensation allowed by the Act. The compensation worksheets must separately identify the provider of each service.

#### **E. Withdrawal of Counsel**

An attorney appointed to represent a defendant in the lower court may continue representation on appeal. After ordering the transcript(s), and filing the docketing statement and designation of record for the appeal, an attorney who does not desire to continue representation must file a motion to withdraw with the clerk of this court in accordance with 10th Cir. R. 46.4. Failure to comply with this rule will result in denial of the motion. No vouchers will be considered for payment until the final disposition of the appeal (*see* IV above, page 2).

#### **F. Substitution of Counsel**

If an attorney is substituted for a previous CJA attorney appointed in the same case, the total CJA compensation to both attorneys shall not exceed the statutory maximum for one attorney, unless the case involves extended or complex representation. No vouchers will be considered for payment until the final disposition of the appeal (*see* IV above, page 2).

#### **G. Time Spent on Matters Unrelated to Appeal**

Time spent on matters unrelated to appellate representation, even if incidental to arrest or incarceration, is not compensable.

#### **H. Travel Time**

Necessary and reasonable travel time is compensable. Time spent in travel by car over long distances ordinarily traversed by air is not reasonable, unless required by special circumstances. If a trip requires overnight lodging, compensable travel time includes time traveling from the counsel's office or home to the place of accommodation, as well as travel time returning directly to the counsel's office or home. Ordinarily, professional time spent traveling to the court to file a pleading is not compensable.

#### **I. Petition for Writ of Certiorari**

Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari, or responding to a petition for writ of certiorari filed by the government, are considered as applicable to the case before the United States Court of Appeals, and should be included on the voucher for services performed in this court.

If a petition for writ of certiorari is to be filed, counsel should not submit the CJA voucher until *after* the work related to the petition for writ of certiorari is completed. Submitting one comprehensive voucher that includes work related to any petition for writ of certiorari ensures consistent application of

the statutory compensation limits and consistent assessment of the need for judicial certification in cases requesting compensation in excess of the statutory maximum.

**J. District Court Work**

Claims for work done incidental to representation in district court (even if on remand), including time spent preparing the Notice of Appeal, may not be included on an appellate voucher.

**K. Voucher Preparation**

Time spent preparing the voucher is not compensable.

**VII. Reimbursement of Travel Expenses - General Rules**

**A. Reporting Travel Expenses on Voucher**

Claims for travel expenses must be itemized and reported in Block 17 of the CJA 20 form.

**B. Supporting Documentation for General Travel Expenses**

Single item travel expenses that exceed \$50.00 (surface transportation, lodging, mileage, parking, tolls, etc.) must be supported by itemized receipts; credit cards slips and credit card statements may not be sufficient because they do not include details that allow approval of the expense as reasonable and reimbursable. Expenses not properly documented may be disallowed in their entirety.

**C. Determination of Reasonable Expenses**

Reimbursement is limited to reasonable, actual expenditures. To determine whether expenses are reasonable, counsel should be guided by limitations on travel expenses applicable to federal judiciary employees, contained on the attached *Criminal Justice Act Payment Rates*, page 11. Rate updates are available at GSA website, <http://www.gsa.gov>.

**D. Supporting Documentation for Lodging**

Receipts for lodging must be sufficiently itemized to establish that reimbursement is not being sought for safe deposit boxes, hotel safes, in-room movies, or other expenses that are not reimbursable under the Criminal Justice Act. For this reason, itemized hotel bills should be submitted; credit card receipts and statements typically do not provide sufficient detail to ensure that reimbursement is not sought for non-reimbursable expenses.

## **E. Supporting Documentation for Meals**

Receipts for meals must be sufficiently itemized to establish that reimbursement is not being sought for alcoholic beverages, charges for persons other than appointed counsel or other expenses that are not reimbursable under the Criminal Justice Act. If counsel seeks reimbursement for a meal at the hotel restaurant or for an room service meal, counsel should provide an itemized receipt; hotel statements do not include sufficient detail to ensure that reimbursement is not sought for non-reimbursable expenses. Similarly, itemized restaurant receipts should be submitted; credit card receipts and statements typically do not provide sufficient detail to facilitate approval of the request as reasonable and reimbursable.

## **F. Air and Lodging Reservations**

Air travel should be arranged through either Omega World Travel or Travel Company of Montana, Inc. (Travco). Toll-free reservations can be made through Omega by calling 1-866-450-0401, Monday through Friday from 7:00 a.m. to 9:00 p.m., Eastern Standard Time. Toll-free reservations can be made through Travco by calling 1-877-890-5474, Monday through Friday from 8:30 a.m. to 8:00 p.m., Eastern Standard Time. Government rates should be obtained for both transportation and lodging. All reservations needed (airfare, hotel) should be made at the same time and any itinerary changes must be made through the same company. Copies of the travel authorization issued by this court, travel itinerary, and passenger receipt should be attached to the CJA 20 voucher. Reimbursement for travel not made through Omega or Travco will be limited to the government rates.

## **G. Travel by Private Automobile**

Automobile mileage is reimbursable at the rate prescribed for federal judiciary employees conducting official business. *See* rate sheet page 11. Claims should be supported by a statement showing the date, distance, origin and destination of travel. If travel is by automobile, the total mileage expense shall not exceed the airfare authorized by Omega and Travco for coach accommodation, except in an emergency, or other unusual circumstances.

## **H. Hotel Telephone and Internet**

Hotel telephone charges will be reimbursed up to \$5.00 per day. Hotel internet charges will be reimbursed up to \$10.00 per day. If any additional charges are sought, to receive reimbursement counsel must submit a brief statement of how the charge is incidental to representational duties.

## **I. Non-Reimbursable Expenses**

Personal items (alcoholic beverages, in-room movies, etc.) are not reimbursable.



## **VIII. Reimbursement of Other Expenses - General Rules**

### **A. Reporting Other Expenses on Voucher**

Claims for non-travel expenses must be itemized and reported in Block 18 of the CJA 20 voucher.

### **B. Supporting Documentation for Other Expenses**

Counsel must provide expense documentation to support claims for reimbursement, such as itemized bills, receipts, or invoices, for single item expense charges that exceed \$50.00. Credit card slips and credit card statements typically do not provide sufficient detail to permit reimbursement. Expenses not properly documented may be disallowed in their entirety.

### **C. Copying**

In-house copying is limited to actual costs, at no more than 20¢ per page. If a higher rate is sought, counsel must submit a brief statement showing why the rate is justified. In-house copy logs or other information (identifying what was copied, how many copies were made and the rate) must be submitted for single event charges that exceed \$50.00 (e.g., copying the principal brief). Claims for commercial copying services must be supported by an itemized invoice; credit cards slips and statements typically do not provide sufficient detail to permit approval of the expense as reasonable and reimbursable. Commercial charges for preparing 40 copies in booklet format of a petition for certiorari will not be reimbursed as such preparation may be waived upon proper filing of a motion to proceed *in forma pauperis* (see S. Ct. Rules 12, 33.2 and 39).

### **D. Long-Distance Telephone Calls**

Itemized statements must be submitted to support claims for long-distance telephone calls that exceed \$50.00 per appeal. The supporting documentation must contain the date, cost, and recipient of each call.

### **E. Facsimile Transmissions**

In-house facsimile logs must be submitted in support of claims for reimbursement of fax charges that exceed \$50.00 per appeal. Claims for facsimiles transmitted at a commercial establishment must be supported by an itemized receipt. Costs in excess of \$1.00 per page will not be reimbursed.

### **F. Postage/Expedited Mail/Courier**

Single item expenses that exceed \$50.00 (postage, expedited mail and courier) must be supported by itemized receipts. The supporting documentation must be an itemized receipt including the date, nature of service, and cost. Expedited mail and courier charges are disfavored other than to confirm delivery of the

principal brief (or answer brief, if defendant is the appellant). The use of expedited mail or courier services for other filings may be reimbursed if counsel adequately explains the need for such services and provides proper supporting documentation.

#### **G. Legal Research by Law Student, Law Clerk, Paralegal**

Claims for the actual cost of legal research by a qualified law student, law clerk, or paralegal should be included on the CJA 20 voucher, Line 18 (Other Expenses) and must be supported with a brief statement of the need for and subject matter of the research; an estimate of the cost of attorney time that would have been required to do the research; and the usual hourly rate of such personnel.

If the costs for such services will exceed \$500, the services must be pre-approved by the court unless it determines that, in the interest of justice, procurement of necessary services could not await prior authorization. 18 U.S.C. § 3006A(e)(2). Reimbursement for such services may not exceed \$1600 unless the court determines that such services were of an unusual character or duration. Excess reimbursement must also be approved by the chief circuit judge or her delegate. 18 U.S.C. § 3006A(e)(3).

#### **H. Computer Assisted Legal Research**

Whenever appointed counsel incurs charges for computer-assisted legal research, counsel should attach to the CJA 20 voucher a copy of the itemized bill for the use of the legal research services or an explanation of the precise basis of the charge. If the amount claimed is in excess of \$500.00, or if it includes costs for downloading or printing, counsel should include a brief statement of justification.

#### **I. General Office Overhead**

General office overhead is not reimbursable—this includes, but is not limited to: supplies; overtime; rent; telephone services; mailers/envelopes; secretarial services and other administrative/clerical services. Nor is professional time spent on secretarial or clerical tasks compensable as part of counsel's fee.

#### **J. Expenses of Personal Nature for Individual Represented**

The cost of items of a personal nature purchased for or on behalf of the person represented is not reimbursable.

#### **K. Expenses Unrelated to Appeal**

Expenses unrelated to appellate representation, even if incidental to arrest or incarceration, are not reimbursable. Expenses related to the filing of the Notice of Appeal in the district court may not be included on an appellate voucher.

## **L. Interpreter Services**

Prior authorization from the presiding judicial officer must be secured for all interpreter services where the cost will exceed \$500. Prior authorization is sought by filing a motion including an estimation of the costs and a statement why the expense is reasonable and necessary. Failure to obtain prior authorization may result in the disallowance of any amount claimed in excess of \$500, unless the court finds that, in the interest of justice, timely procurement of necessary services could not await prior authorization. 18 U.S.C. § 3006(e)(3).

## **M. Filing Fees**

Filing fees are not reimbursable. This includes filing fees related to a petition for certiorari as such fees may be waived upon proper filing of a motion to proceed *in forma pauperis* (see S. Ct. Rules 12, 33.2 and 39).

## **N. Transcript Fees**

The cost of court-authorized transcripts should be claimed by the court reporter or reporting service on a CJA 24 form; if counsel has elected to pay for these, counsel should likewise seek reimbursement on a CJA 24 form, not a CJA 20 form.

# **IX. General Information**

## **A. Public Disclosure**

CJA 20 vouchers filed by counsel may be subject to public disclosure unless disclosure should be limited based upon: (1) protection of any person's Fifth Amendment right against self-incrimination; (2) protection of the defendant's Sixth Amendment right to effective assistance of counsel; (3) the defendant's attorney-client privilege; (4) the work-product privilege of defendant's counsel; (5) the safety of any person; or (6) any other interest that justice may require. If counsel wishes to request redaction or non-disclosure of any portion of the voucher based upon one of these interests, counsel should seek such relief by motion at the time the CJA 20 voucher is filed. Absent such a motion, the face of the voucher will be made available to the public upon request.

## **B. Panel Attorney Data Form**

Counsel is required to submit a Panel Attorney Data (PAD) Form CJA 5 with each voucher request. Every form must be completed with contact information for appointed counsel, including e-mail address.

If the earnings for the representation on appeal belong to the attorney individually, then the PAD Form is completed by entering the attorney's social security number and leaving blank the lines for the law firm or corporation and

its Employer Identification Number (EIN). Earnings will then be reported to the IRS on a 1099 Statement as earnings of the appointed attorney individually.

If prior to appointment, the attorney appointed had a pre-existing agreement with a law firm or corporation, including a professional corporation, under which the earnings for this appeal belong to the law firm or corporation, rather than to counsel individually, then the PAD form is completed by inserting the name, address and EIN of that law firm or corporation. Earnings will then be reported IRS on a 1099 Statement as earnings of the law firm or corporation and not as earnings of the individual attorney. However, the attorney's individual social security number must still be entered on the PAD Form.

### **C. Additional Resources**

Counsel is encouraged to visit the CJA Forms & Links portion of court's website (<http://www.ca10.uscourts.gov>) to review current rates, forms, and general information. Please also review the *Guide to Judiciary Policies and Procedures* available at <http://www.uscourts.gov/defenderservices/index.html>. Finally, you may find the following websites provide substantial assistance: The Defender Services Division Training Branch website at <http://www.uscourts.gov/defenderservices/mission.html>, and the Federal Public Defenders' website, <http://www.fd.org>.

### **D. Contacts**

If there are questions, counsel is encouraged to contact the court's CJA staff before submitting a CJA 20 voucher to the clerk; by telephone as set out below or by e-mail at [CJA\\_Vouchers@ca10.uscourts.gov](mailto:CJA_Vouchers@ca10.uscourts.gov):

CJA Supervising Attorney  
303.335.2846

CJA Case Analyst  
303.844.5306

### **X. Note to Counsel**

This letter addresses only subjects of repeated error or frequent inquiry and is not inclusive. Questions regarding the completion of and attachments to vouchers are welcome. Counsel representing clients under a sentence of death should refer to the court's separate memorandum referencing procedures in capital cases. Counsel in those matters should also review 21 U.S.C. § 848(q).

*Source: Guide to Judiciary Policies and Procedures, Volume VII, Section A, Chapter II*

## **CRIMINAL JUSTICE ACT PAYMENT RATES**

### **HOURLY RATES**

<b><u>Professional Services Delivered</u></b>	<b><u>1/1/00 and after</u></b>	<b><u>4/1/01 and after</u></b>	<b><u>5/1/02 and after</u></b>	<b><u>1/1/06 and after</u></b>	<b><u>5/20/07 and after</u></b>
In-court	\$70	\$75	\$90	\$92	\$94
Out-of-court	\$50	\$55	\$90	\$92	\$94

### **STATUTORY MAXIMUM COMPENSATION FOR FEES**

(requests over this sum require submission of excess-fee memo with voucher)

Work completed by 11/12/00:	\$2,500
Work completed on or after 11/13/00:	\$3,700 (\$3,900 for parole appeals)
Work completed on or after 12/8/04:	\$5,000

### **MILEAGE (Travel Expenses Incurred)**

	<b><u>2004</u></b>	<b><u>2005</u></b>	<b><u>2005</u></b>	<b><u>2006</u></b>	<b><u>2007</u></b>
(privately owned vehicle)	(1/1/04 - 2/3/05) \$.37.5/mile	(2/4/05-8/31/05) \$.40.5/mile	(9/1/05-12/31/05) \$.48.5/mile	(1/1/06-12/31/06) \$.44.5/mile	(1/1/07-present) \$.48.5/mile

### **SUBSISTENCE (Lodging & Meals)**

Counsel should be guided by prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees with existing government travel regulations. For per diem allowance *see* GSA website, <http://www.gsa.gov>.

***United States Court of Appeals  
for the Tenth Circuit***  
Court-Appointed Counsel Worksheet (CJA 20)

Page \_\_\_\_ of \_\_\_\_  
Case No. \_\_\_\_\_  
Case Name: \_\_\_\_\_

**In-Court Services**

<b><u>Date</u></b>	<b><u>Brief Description of Services</u> (In-court time is generally limited to one hour or the actual time of argument. Waiting time may be claimed as out-of-court time.)</b>	<b>15(g) Appeals Court</b>
<b>PAGE TOTAL:</b>		

***United States Court of Appeals  
for the Tenth Circuit***  
Court-Appointed Counsel Worksheet (CJA20)

Page \_\_\_\_\_ of \_\_\_\_\_

Case No. \_\_\_\_\_

Case Name: \_\_\_\_\_

## Out-of-Court Services

Date	Brief Description of Services (Expended time must show nature of work performed, date executed, time broken down by <i>each</i> task, and must be listed in hours and tenths of an hour.)	16(a) Interviews & Conferences	16(b) Obtaining & Reviewing Records	16(c) Legal Research & Brief Writing	16(d) Travel Time	16(e) Investigative and Other Work
PAGE TOTAL:						

***United States Court of Appeals  
for the Tenth Circuit***  
Court-Appointed Counsel Worksheet (CJA 20)

Page \_\_\_\_ of \_\_\_\_  
Case No. \_\_\_\_\_  
Case Name: \_\_\_\_\_

**Travel Expenses**

<b><u>Date</u></b>	<b><u>Brief Explanation of Expenses</u></b> (Travel expenses exceeding \$50 must be supported with itemized receipts; credit card receipts and credit card statements often are not sufficient documentation.)	<b>Lodging<sup>1</sup></b>	<b>Meals</b>	<b>Parking</b>	<b>Transportation</b>	<b>Other Travel Expenses</b>
<b>PAGE TOTAL:</b>						

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<sup>1</sup> Customarily, CJA counsel is allowed one night of lodging, unless good cause is shown why a second night was necessary.



***United States Court of Appeals  
for the Tenth Circuit***  
Court-Appointed Counsel Worksheet (CJA 20)

Page \_\_\_\_\_ of \_\_\_\_\_

Case No. \_\_\_\_\_

Case Name:\_\_\_\_\_

### Other Expenses

Date	Brief Explanation of Expenses (Other expenses exceeding \$50 must be supported with itemized receipts; credit card receipts and credit card statements often are not sufficient documentation.)	In-House Copies (20¢/copy)	Commercial Copying	Postage	Telephone	Other Expenses
PAGE TOTAL:						